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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81773; File No. SR-NASDAQ-2017-101

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Implementation Date for Certain Changes to the Rule 5700 Series and Rule 5810

September 29, 2017

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 27, 2017, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the date on which certain changes concerning the continued listing requirements for exchange-traded products (“ETPs”) in the Nasdaq Rule 5700 Series, as well as a related amendment to Nasdaq Rule 5810 (Notification of Deficiency by the Listing Qualifications Department), are implemented.

The Exchange proposes to delay the implementation date of these changes until January 1, 2018. Given the scope of the proposed rule changes, the Exchange believes that this will

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

ensure that ETP issuers have adequate time to finish developing and put into operation the new processes and systems necessitated by them.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 30, 2016, the Exchange filed a proposed rule change, as subsequently amended by Amendments No. 1 and 2 thereto, and as supplemented by two clean-up filings³ (as amended and supplemented, collectively, the "Proposed Rule Change"), to adopt certain changes to the Nasdaq Rule 5700 Series, as well as a related amendment to Nasdaq Rule 5810 (Notification of Deficiency by the Listing Qualifications Department), to add additional continued listing standards for ETPs, as well as clarify the procedures that the Exchange will undertake when an ETP is noncompliant with applicable rules.

On May 3, 2017, the Exchange filed to extend the implementation date from August 1,

³ See Securities Exchange Act Release No. 79081 (Oct. 11, 2016), 81 FR 71548 (Oct. 17, 2016) (SR-NASDAQ-2016-135); see also Securities Exchange Act Release No. 80708 (May 17, 2017), 82 FR 23690 (May 23, 2017) (SR-NASDAQ-2017-040); see also Securities Exchange Act Release No. 80810 (May 30, 2017), 82 FR 26205 (June 6, 2017) (SR-NASDAQ-2017-052).

2017 until October 1, 2017.⁴ The Exchange now proposes to extend the implementation date of the amendments specified in the Proposed Rule Change to January 1, 2018.

Since the Proposed Rule Change was approved, the Exchange has engaged in extensive conversations with issuers of listed ETPs, industry advocacy groups and index providers to discuss the new rule requirements and offer guidance on rule interpretation and application.⁵ As a result of these conversations, ETP issuers have expressed concern about their ability to finish and to have in place systems and procedures to ensure compliance by the current October 1, 2017 implementation date. In particular, listed ETP issuers, and industry advocacy groups on their behalf, have explained that issuers will require time to design and test new compliance systems, as well as engage in discussions with third-party providers to source and track new data elements required for rule compliance.⁶ The Exchange's understanding is that some issuers have started to develop procedures, build systems and are testing new compliance systems. Also, that some issuers have begun discussions with third-party providers, including efforts to renegotiate existing license agreements. As of the date of this filing, issuers have said that they will not be ready by the current October 1, 2017 implementation date.

In connection with the implementation of the new continued listing standards, Nasdaq has prepared a set of Frequently Asked Questions ("FAQs") that address questions raised by

⁴ See Securities Exchange Act Release No. 80708 (May 17, 2017), 82 FR 23690 (May 23, 2017) (SR-NASDAQ-2017-040).

⁵ In addition to submitting the index components to the Exchange on a quarterly basis, the Exchange believes that it would be appropriate for issuers to review the index components for compliance with the continued listing requirements in connection with index rebalances, reconstitutions, or other material changes to the index components.

⁶ See, for example, Letter, dated July 11, 2017, from Dorothy Donohue, Acting General Counsel, Investment Company Institute to Brent J. Fields, Secretary, Securities and Exchange Commission, available at <https://www.sec.gov/comments/sr-nasdaq-2016-135/nasdaq2016135-1846208-155175.pdf>.

issuers.⁷ Nasdaq is continuing to discuss the implementation of the continued listing standards with issuers and will continue to revise the FAQs where further interpretive guidance is necessary. Also, there are areas of interpretive guidance still being formulated. For example, interpretive guidance as to how issuers of exchange-traded funds (“ETFs”) should categorize securities into “equity” and “fixed income” buckets, particularly for assets like hybrid capital, preferred securities or convertible debt. Additionally, Nasdaq will maintain and continue communications with issuers during the implementation date extension period in order to understand the issuers’ progress.

The Exchange believes it is appropriate to extend the implementation date of the Proposed Rule Change to January 1, 2018 to provide listed ETP issuers with the time needed to finish developing and testing their compliance procedures. In support of its proposal, the Exchange notes that the Proposed Rule Change imposes significant new compliance requirements on issuers that they have not been subject to previously. To meet these new requirements, issuers must develop additional internal systems, as well as coordinate with third-party service providers, such as index providers, to renegotiate existing license agreements and to develop procedures by which they can obtain essential data.⁸

Listed issuers have informed the Exchange that they are unable to complete this extensive project by the pending October 1, 2017 implementation date. The Exchange believes that it is critical for listed ETP issuers to have the appropriate procedures and systems in place to monitor

⁷ See https://listingcenter.nasdaq.com/Material_Search.aspx?mcd=LQ&cid=142&sub_cid=&years=2017,2016,2015,2017,2016,2015,2014,2013,2012,2011,2010,2009,2008,2007,2006,2005,2004,2003,2002&criteria=1&materials.

⁸ It is the Exchange’s understanding that issuers are updating and testing internal systems to process and monitor the index data for compliance with the new continued listing standards.

and evidence ETP compliance with the new continued listing rules before such rules are implemented because this will help issuers preemptively identify issues and thereby avoid experiencing any disruptions in the trading of their products. Therefore, the Exchange proposes to extend the implementation date for the Proposed Rule Change until January 1, 2018.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is consistent with the protection of investors because it will enable listed issuers to have the systems and procedures needed to monitor and evidence compliance with the Proposed Rule Change prior to such rule being implemented because this will help issuers preemptively identify issues and thereby avoid experiencing any disruptions in the trading of their products. Issuers are still conducting systems testing and further developing procedures. In addition, there are areas of interpretive guidance still being formulated as discussed previously in this filing.

Additionally, Nasdaq will maintain and continue communications with issuers during the implementation date extension period in order to understand the issuers' progress. Providing listed issuers with additional time to ensure that they have adequate compliance systems in place

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

further the protection of investors and the public interest because it will enhance investor confidence that listed issuers are complying with Exchange rules and because it will reassure investors that issuers can properly monitor and preemptively identify issues and thereby avoid experiencing any disruptions in the trading of the issuers' products.

For these reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange believes that the proposed rule change will facilitate listed issuer ability to monitor and evidence compliance with approved continued listing rules by providing issuers with additional time to finish developing and testing their internal systems and procedures prior to the implementation date.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange received a copy of a letter from the Investment Company Institute, on behalf of listed ETP issuers, to the SEC.¹¹ As described in Item 3 [sic], above, the Investment Company Institute detailed challenges that listed ETF issuers are facing in developing compliance systems to address the amendments contained in the Proposed Rule Change and have requested that the implementation date for such amendments be extended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition;

¹¹ See Footnote 6, supra.

and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹³ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiver of the operative delay will allow the Exchange to immediately extend the implementation date of the Proposed Rule Change, and avoid the potential confusion and disruption that could result if the extension did not become operative until after October 1, 2017. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or

¹² 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2017-101 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2017-101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F

Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2017-101 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Eduardo A. Aleman,

Assistant Secretary.

¹⁶ 17 CFR 200.30-3(a)(12).

